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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
New York, 16-27 June 2003

Views submitted by Governments, intergovernmental organizations and United Nations bodies concerning a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities

Note by the Secretary-General

Summary

The present note was prepared pursuant to General Assembly resolution 57/229, in which the Assembly requested the Secretary-General to seek the views of Member States, observer States, relevant bodies and organizations of the United Nations system, including relevant human rights treaty bodies and the Special Rapporteur, on proposals for a convention, including questions relating to its nature and structure and the elements to be considered, in particular the work done in the field of social development, human rights and non-discrimination, as well as issues of follow-up and monitoring and the complementarity between a new instrument and existing instruments. In the same resolution, the Assembly requested the Secretary-General to submit to the Committee at its second session a comprehensive report on the views submitted, to be issued at least six weeks before the commencement of the second session.

The present note provides a summary and excerpts of the views of Member States, intergovernmental organizations, and offices, programmes and specialized agencies of the United Nations system that responded to the request of the Secretariat for submissions. It covers aspects of a convention to promote and protect the rights and dignity of persons with disabilities, including potential objectives, principles, scope and elements of a convention; definitions of disability; monitoring and evaluation mechanisms; options for modes of negotiation in the Committee;

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complementarity with the monitoring of the World Programme of Action concerning Persons with Disabilities and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities; monitoring and evaluation of existing human rights instruments; and other elements. The note concludes by suggesting models for a potential convention based on existing instruments.

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I. Introduction

1. In response to the request of the General Assembly in its resolution 57/229, a note verbale was sent by the Secretariat to invite views on a convention. Replies were received from the following countries: Algeria, Australia, Canada, China, Colombia, Czech Republic, El Salvador, Greece (on behalf of the European Union), Hungary, Japan, Jordan, Lithuania, Mauritania, Mexico, Norway, Qatar, the Russian Federation, Slovakia, Uganda and Thailand. The Pacific Islands Forum, the League of Arab States and the African Union also submitted comments. The Economic and Social Commission for Asia and the Pacific (ESCAP); the United Nations Human Settlements Programme (UN-Habitat); the Office of the United Nations High Commissioner for Human Rights; the United Nations Children's Fund (UNICEF); the International Labour Organization (ILO); the Food and Agriculture Organization of the United Nations (FAO); the World Health Organization (WHO); the Pan American Health Organization (PAHO); and the International Civil Aviation Organization (ICAO) made contributions. The Committee against Torture, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child limited their contributions to preliminary remarks.

II. Background

2. The United Nations Decade of Disabled Persons (1983-1992) saw the creation of normative standards to advance the rights of persons with disabilities. Superseding previously held notions of "social welfare", those standards reflected a human rights framework that would facilitate the full participation of persons with disabilities in all aspects of life and development, on the basis of equality

3. The connection between human rights, violations of fundamental freedoms and disability was further elaborated in a report entitled "Human rights and disabled persons" prepared by the Special Rapporteur on disability of the Commission on Human Rights in the early 1980s. The report recognized the importance of further developing jurisprudence within human rights mechanisms and institutions, at both international and national levels, and of increasing efforts to adjudicate the rights of persons with disabilities.

4. At the mid-point of the Decade, the first initiative for a convention emerged during a global meeting of experts to review the implementation of the World Programme of Action concerning Disabled Persons, held in Stockholm from 17 to 22 August 1987. The meeting recommended that the General Assembly convene a special conference on the rights of persons with disabilities, with the mandate to elucidate such rights and to draft an international convention on the elimination of all forms of discrimination against disabled persons, to be ratified by States by the end of the Decade, in 1992. The Government of Italy raised the possibility of an international convention at the forty-second session of the General Assembly (see A/C.3/42/SR.16), and the Government of Sweden proposed the elaboration of an international instrument on the rights of persons with disabilities at the forty-fourth session of the Assembly (see A/C.3/44/SR.16). Agreement was ultimately reached on the elaboration of a non-binding instrument, the Standard Rules on Equalization of Opportunities for Persons with Disabilities, in 1993. Unanimously adopted by the General Assembly in its resolution 48/96, the Standard Rules are an international

instrument promoting disability-sensitive policy design and evaluation, as well as technical cooperation.

5. A comprehensive comparative study of global disability policies and programmes undertaken by the United Nations in 1997 (A/52/351) further identified the need for a broad human rights framework which would draw upon the considerable body of international norms and standards in various fields and contribute to the advancement of the rights of all persons in society.[1] The Commission on Human Rights adopted a resolution in 2000 to include the rights of persons with disabilities in the monitoring mechanisms of relevant human rights instruments.

6. In 2001, the Government of Mexico raised the issue of a convention to protect and promote the rights of persons with disabilities,[2] and in its resolution 56/168, the General Assembly established the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities to consider proposals for a convention. The Committee held its first meeting from 29 July to 9 August 2002, during which discussions took place on a wide range of organizational and thematic issues concerning a convention. In its resolution 57/229, the General Assembly invited participation and input in the work of the Committee by all stakeholders: Governments, international organizations, regional bodies and civil society, especially organizations of persons with disabilities, as well as individual experts.

7. During the forty-first session of the Commission for Social Development (2003) and the fifty-ninth session of the Commission on Human Rights (2003), resolutions were adopted which called for continued contributions and collaboration on a convention to promote and protect the rights and dignity of persons with disabilities. The resolution adopted by the Commission on Human Rights also called upon the Office of the United Nations High Commissioner for Human Rights to continue to implement recommendations related to the study on human rights and disability commissioned by his Office. The report of the Secretary-General on the implementation of the World Programme of Action concerning Disabled Persons (A/58/61-E/2003/5), which contains recommendations concerning the elaboration of a convention, will be submitted to the General Assembly at its fifty-eighth session. The report will also be made available to the Committee at its second session.

III. Contributions received from Governments, intergovernmental organizations and the United Nations system

A. General remarks

8. All replies addressed the elaboration of a convention on the rights of persons with disabilities in accordance with operative paragraph 5 of General Assembly resolution 57/229. Two responses (Colombia and El Salvador) provided comments directly to the draft text previously proposed by the Government of Mexico (see A/AC.265/WP/1).

9. Support for the work of the Committee to consider proposals for a convention was widespread among respondents to the note verbale. Replies indicated a wide

range of issues to be considered in the context of an international convention: international norms, standards and procedures; strategies for implementation at the national level; rights of persons with psychiatric and developmental disabilities; women with disabilities; accessibility to information technology and environments; and the connection between development and disability. The fundamental principles and provisions of the convention should be linked to development and address a wide range of social, economic and cultural issues. Broad international support for the proposed convention and effective implementation would be necessary for the full realization of the human rights of persons with disabilities, while recognition must also be accorded to the different historical and cultural backgrounds and varying levels of development of countries. Special attention was required to the situations of developing countries, in particular the least developed countries.

10. While recognizing the potential for adjudication of the human rights of persons with disabilities within existing United Nations human rights mechanisms, a number of references highlighted existing constraints and pointed out that mainstreaming disability within existing United Nations human rights mechanisms was an urgent priority. A number of comments raised the question of overall streamlining and mainstreaming of disability in the existing human rights mechanisms while avoiding duplication and overlap, as well as how existing instruments and procedures would address the rights of persons with disabilities in an integrated and comprehensive manner. Some replies expressed concern that the Committee must engage in a systematic review of the complementarity and normative consistency between a new convention and the existing instruments before considering elaboration of a convention.

11. Many replies referred to the importance of not only the legal frameworks for eliminating discrimination but also the effective formulation and evaluation of legislation and policies on disability. Views were expressed that a new convention should provide guidance on policies and legislation by defining obligations and supporting implementation activities. A convention should provide a framework of options to address the varying conditions of disability and their consequences not specifically covered in existing international instruments.

12. Strong emphasis was given to incorporating a gender perspective in all efforts to promote and protect the rights of persons with disabilities, in particular in the process of elaborating a convention.

13. Many Governments expressed their commitment and support for continuing promotion and implementation of the Standard Rules. It was noted that the Standard Rules could provide comprehensive normative guidance and an empirical basis for a new instrument.

14. A large number of replies reiterated the role of civil society as a crucial and essential factor in the process of elaborating a convention, as well as in the implementation of international human rights norms to promote the rights of persons with disabilities. Non-governmental organizations, especially those of persons with disabilities, experts, regional bodies and the Special Rapporteur on disability of the Commission for Social Development are expected to be actively involved in the process for the elaboration of a convention.

B. Specific views of Governments: comments regarding the elements of a convention

Objectives

15. Among the objectives of a convention described in the replies were to promote equal and effective enjoyment of all human rights and fundamental freedoms by persons with disabilities; to eliminate all forms of discrimination against persons with disabilities; to clarify the content of the human rights principles and ensure consistency and the applicability of all human rights in the disability context; to provide an authoritative and global reference point for domestic law, policy and initiatives; to include effective monitoring of the rights of persons with disabilities through implementation of the new convention as well as existing international instruments; to promote the removal and prevention of all barriers to the full participation of persons with disabilities in all aspects of society; to enhance social integration and social development through participation of persons with disabilities as active contributors and beneficiaries; and to provide an international legal framework to strengthen regional and international cooperation.

16. Mexico stated that the ultimate objective of a convention was twofold: to achieve universal awareness of the needs of persons with disabilities; and to achieve the full development of persons with disabilities and their inclusion in all spheres of life, with conditions and opportunities equal to those of other people. The European Union stated that a convention should be a balanced, realistic and legally binding instrument that would aim to develop those provisions of existing human rights treaties with a view to tailoring them, where relevant, to the specific circumstances faced by persons with disabilities.

17. The need to acknowledge different levels of development and strengthen international cooperation was raised by several countries, including Algeria, China, the Czech Republic and Thailand.

Principles

18. A number of replies referred to the basic human rights principles as contained in the six core international human rights instruments, as well as other international instruments relating to disability: respect for human dignity; equality and non-discrimination; inclusion and participation; autonomy and self-determination.

19. Australia considered that the principles adopted in the Standard Rules should form the basis for a convention, since they had received a high level of acceptance by the international community. Mexico and Slovakia referred to the applicability of basic human rights principles to the varying conditions of persons with disabilities. The Czech Republic referred to the principles of mainstreaming and respect for diversity.

20. Lithuania stated that the principles should be adopted from all international norms and standards relating to disability, not only legal instruments but also resolutions of United Nations bodies and organizations.

Scope

21. Many countries envisaged a holistic convention encompassing all human rights: civil, political, economic, social and cultural, and based on general principles

relevant to disability, such as equality and non-discrimination. The European Union stated that the new instrument must take into consideration the diversity of persons with disabilities, while at the same time recognizing common experiences of discrimination based on disability. Qatar suggested that drafting a convention required a realistic approach and stated that it would be difficult to draft a comprehensive convention, and therefore the convention should be limited to general principles, such as non-discrimination and equality, with the possibility of adding more detailed protocols in the future. It felt that a highly detailed instrument would be unlikely to gain broad acceptance among Governments.

22. Canada stated that any new instrument should build on the rights, norms and standards set out in existing international instruments. China suggested that the convention serve as a programmatic document offering guidance to all countries in the protection of persons with disabilities. The Czech Republic stated that the adoption of a binding instrument was necessary, providing common standards for incorporating the experience in implementation of the World Programme of Action and the Standard Rules. China stressed giving equal emphasis to human rights and social development, a view also expressed by Thailand, which would include social development in the scope of the convention, in addition to human rights and non-discrimination.

23. Algeria, China and Qatar stated that a convention should take into account different degrees of implementation of economic and social rights, as well as technological advances and economic progress of each country, so that it could attract broad support and widespread ratification. Algeria also emphasized the need for a synopsis of the individual circumstances of each State. Japan and the Czech Republic pointed to the jurisprudence in progressive achievement of economic and social rights and its implications for the rights of persons with disabilities.

Definitions of disability

24. The definition of disability has been an integral concern to policy makers, legislators and academics. Most replies noted that there is no single definition of disability and reflected that disability was frequently dependent on context. Several replies referred to the International Classification of Functioning, Disability and Health adopted by the World Health Organization in 2001, and Canada suggested that any definition should reflect that work so as to promote the standardization of international disability terminology and collection of data on disability issues. The view was expressed that a definition should reflect social dimensions of disability and avoid the construction of disability as solely medical. Views were also expressed that the definition must be harmonized with the principles of human rights and the goals of specific laws, policies and programmes.

25. Algeria found the existing definitions useful, while Jordan preferred the adoption of more progressive and comprehensive definitions. Japan stated that the definitions should be universally accepted but leave flexibility for interpretation by individual countries. The European Union considered it necessary to take into account the diverse and complex nature of disability to preclude any misinterpretations. Norway stated that the convention should cover disabilities arising from all kinds of impairments (physical, mental, sensory) and the handicaps that were imposed on persons with disabilities by the demands of society and environment. The Russian Federation offered the following definition of persons

with disabilities: "persons whose health is impaired by a lasting deterioration of the functions of the organism resulting from disease, injury or deficiencies, creating limitations affecting their daily living and necessitating social protection".

26. The European Union considered that the question of definition required further consideration, and that any definition would need to strike an effective balance between the diverse and complex nature of disability and the need to avoid overly broad wording that could be subject to misinterpretation. The EU favoured refraining from defining aspects of disabilities that were not necessary for the purposes of the instrument, and suggested that detailed discussion of this subject should be avoided at this early stage in the process since it was likely to hold up substantive discussion. It was noted that there should be further discussion in which this question is addressed in national laws, international law and substantive measurement tools.

Elements

27. Many replies referred to the basic human rights provisions of the existing international human rights and disability-specific instruments, such as the Standard Rules. While the most fundamental human rights obligations should also be applicable to all persons with disabilities, special measures were required to ensure that persons with disabilities were to enjoy equal opportunities.

28. Canada pointed to the need to stipulate the obligations of States parties related to equality and non-discrimination in national legislation and policies. China, Mexico and Norway proposed a wide range of rights specifically focusing on meeting the requirements of persons with disabilities, such as the right to access to information and to the environment, as well as the right to social and health services, so as to enable their full participation in society. Norway further stated that States parties would commit to taking appropriate steps to create a society which was free from man-made barriers and based on the principle of universal design, and suggested that a convention should state that all future multilateral and bilateral agreements on development aid should take appropriate account of the needs of persons with disabilities and of the principle of universal design. Hungary referred to its national legislation, which encompassed the rights of persons with disabilities to accessibility, social services, medical care and rehabilitation, education, employment, freedom of movement and cultural rights.

Monitoring and evaluation mechanisms

29. All replies identified the need for an effective monitoring and evaluation system, and some made specific suggestions. The Czech Republic, Jordan and Qatar suggested parallels to existing mechanisms of United Nations human rights treaty bodies. The Czech Republic considered that the mechanism related to the International Covenant on Economic, Social and Cultural Rights would be an appropriate model since the new convention should be similar to the Covenant, especially regarding obligations under the Covenant. It suggested a mechanism based on the submission of reports to a special committee established by a new convention. The committee would also be authorized to appoint a special rapporteur to examine specific issues or to conduct inquiries. Jordan raised the possibility of including a technical advisory body to provide guidance to Governments on matters not specifically addressed by a new convention, including guidelines on

accessibility to the man-made environment and information technologies; accessibility guidelines on the reconstruction of post-conflict societies; and disability guidelines on programme design and implementation for international development and humanitarian assistance work. Hungary, Qatar and Thailand suggested provisions to ensure that persons with disabilities and their organizations could participate in any monitoring and evaluation mechanism or exercises.

30. Uganda proposed the development and dissemination by the United Nations of monitoring and evaluation forms that States parties would return to the United Nations for analysis and feedback. China proposed holding biennial meetings of the States parties to the Convention under the auspices of the United Nations. Such meetings would be responsible for evaluating the implementation of the convention and reviewing the recommendations and views put forward by committees of experts, ultimately submitting them in report form to the main organs of the United Nations. Thailand suggested the inclusion of targets and implementation plans in the convention, as well as guidelines for implementation at both the national and international levels. Australia, Canada and Japan expressed concern over duplication of the work already done by other bodies and the need to discuss monitoring and evaluation systems carefully. The replies indicated a desire to utilize, improve and coordinate existing international mechanisms rather than create new ones. It was important to avoid imposing additional onerous reporting requirements on States parties. The Russian Federation stated that inclusion of disability in periodic reporting under the existing treaty bodies would be sufficient and there was no need for a separate body to monitor implementation of a new convention.

Options for modes of negotiation

31. Most replies emphasized the importance of involving persons with disabilities and all other stakeholders concerned with the promotion of the rights of persons with disabilities. Mauritania and Uganda saw the necessity of including the families of persons with disabilities, especially parents of children with disabilities, in the drafting process. China stated that contributions to the work on a convention should be solicited through the framework of the current Committee, and proposed that Governments include persons with disabilities and representatives of their organizations in national delegations to the Committee. Canada also supported the Committee as the appropriate means of examining the issue of an international convention. El Salvador, Jordan, Lithuania and Mauritania proposed the establishment of a working group to draft a convention. Jordan went on to state that the Committee should be mandated to establish a working group, which would be the focal point for contributions from all stakeholders. The involvement of persons with disabilities in the working group should be considered on the basis of equitable representation, based on geography and economic development as well as different types of disability. China also proposed that periodic meetings be held in the coming months either at United Nations Headquarters or other venues in order to speed progress of work and achieve consensus to start drafting a convention.

32. Mexico proposed that the Committee consider at its second session the proposals and input for the submitted text of a convention. Mexico stated that options for the establishment of working groups or other forms of groups could be discussed at a later stage as work progressed in the Committee and on the basis of the proposal from its Chairman.

33. The Russian Federation proposed the establishment of an open-ended working group to meet during the sessions of the Commission for Social Development, following the example of the drafting of the optional protocol to the Convention on the Elimination of Discrimination against Women. Uganda suggested establishing a consultative group, including policy makers, implementing agents, disability organizations, service providers and families of persons with disabilities.

34. The European Union stated that the question of the mode of negotiation of a future instrument was premature since the Committee was still in the process of identifying its nature and structure as well as the elements to be included. It stated, however, that it welcomed the submission of relevant new proposals and expressed the hope that they would be given appropriate consideration. The work of the Committee must be transparent and inclusive and incorporate the contributions of both specialized non-governmental organizations and independent experts to the advancement of the elaboration process.

35. Australia stated that the current discussion on a convention was proceeding without a thorough examination of which of the rights of persons with disabilities were not protected under existing instruments and whether there were methods for closing those gaps that would not entail the negotiation of a new convention. Canada, Japan and Norway reiterated that the existing mechanisms to promote and protect the rights of persons with disabilities must be carefully reviewed to ensure that any new instrument helped to coordinate, focus and enhance rather than undermine the work of existing international bodies.

Complementarity with regard to monitoring of the World Programme of Action concerning Disabled Persons and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities

36. Most replies stressed the need to continue implementation of the mechanisms with regard to the two existing instruments. Thailand suggested that there should be one specific monitoring and evaluation mechanism for the two existing instruments. The Czech Republic stated that the monitoring of the implementation of the Standard Rules was limited because of its non-binding nature.

37. According to the European Union, the elaboration of a new instrument should not delay the process of refining and updating the Standard Rules. Effective monitoring and evaluation mechanisms, in particular, were necessary to ensure effective implementation, transfer good practices and assist States in raising levels of understanding concerning the relevant obligations. By carefully following up on the ongoing work of the World Programme of Action and the Standard Rules, human rights machinery can be streamlined in a way that promotes efficiency and avoids duplication.

Monitoring and evaluation of the existing human rights instruments

38. Most replies referred to the existing human rights instruments and the need to strengthen and streamline their machinery to incorporate disability more effectively in the work of the existing treaty bodies. Australia, the European Union and Japan stressed that the proposal for a new convention was an opportunity to promote other relevant conventions and to improve their effectiveness to promote and protect the human rights of persons with disabilities. Qatar stated that a convention would be used to mainstream instead of marginalize the issue of disability. Complementarity

and avoidance of duplication would therefore be key issues during the negotiation process, according to Norway.

39. Canada stated that the basic framework was represented by the six core United Nations human rights conventions, and suggested that even if a new convention were adopted, it would still be necessary to obtain maximum advantage from the existing human rights instruments. Norway pointed to the need to clarify the division of work between a possible new monitoring and evaluation mechanism and the mechanisms of existing instruments. Monitoring and evaluation of a new convention could possibly be undertaken by one or several of the existing agencies, and in any case the disability perspective should be strengthened within existing human rights mechanisms. The EU also suggested the need for concrete efforts to mainstream the disability perspective into the monitoring mechanism of all core United Nations human rights treaties, using a new instrument that was tailored to relevant obligations within existing human rights treaties and that acknowledged the specific circumstances faced by persons with disabilities. Japan noted that there should be careful consideration given to options for a monitoring mechanism of the new convention in view of the ongoing review of the official reporting obligations of State parties under existing international human rights instruments.

40. The Czech Republic, Jordan and Mexico expressed the view that because no requirement existed for States to report on the situation of persons with disabilities, an authoritative international legal instrument for persons with disabilities was needed based on examples of conventions pertaining to other social groups, such as women and children. Jordan stated that the monitoring and evaluation mechanism of a future convention should become the authoritative reference point for the interpretation and application of existing general human rights instruments with regard to disability.

41. Australia referred to an initiative to improve the effectiveness of the United Nations human rights treaty monitoring bodies, and expressed concern about the lack of adequate mechanisms under the existing international human rights treaties to filter out complaints that were clearly inadmissible, the long delays caused by multiple submissions and the inadequate reasons given for the views expressed by the existing treaty bodies.

Other elements/proposals

42. Colombia and El Salvador emphasized the implementation of measures to increase effectiveness of existing regulatory frameworks and to strengthen service providers. A convention should focus on standardizing existing norms and on their effective implementation. Colombia also stated that the elaboration of a new instrument could be linked to the establishment of an effective and reliable national and international system for collecting information concerning persons with disabilities and their families.

43. The Czech Republic and Jordan expected a new convention to provide a framework for incorporating a coherent and authoritative set of norms to avoid divergence in the interpretation of the same rights in different contexts. Jordan also noted that the legislation of States parties could be used to identify areas that need further development. Mexico, through the elaboration of a convention, sought to promote international cooperation and exchange of information, as well as to promote best practices and technical cooperation.

C. Views and comments of intergovernmental organizations

African Union

44. The African Union was convinced of the need for a legally binding instrument specifically focused on the rights of persons with disabilities and recognized that such a convention would add value to the Universal Declaration on Human Rights. It pointed to the special need to consider the plight of persons with disabilities in Africa. Of particular concern was the situation of women, who faced extra hardships and low levels of education and represented some of the most marginalized citizens. Furthermore, the African Union highlighted the need to consider the aspect of sexuality, especially for women with disabilities, who might be forbidden from getting married or having children simply because they were disabled.

45. The African Union affirmed that African people must strive to remove social barriers and uphold the principle of affirmative action for persons with disabilities. Based on the Proclamation and Declaration of the African Decade (1999-2009) as well as the Plan of Action for the Decade approved in July 2002, the Union stressed the pivotal role of regional bodies in their cooperation with Member States and specialized agencies.

League of Arab States

46. In addition to its report on the principles and activities related to the Conference of Arab States on Disability, held at Beirut in October 2002, the contribution of the League of Arab States summarized the ongoing activities in the Arab region, with specific reference to the preparation of an Arab Decade of Disabled Persons, 2004-2013. Most notably, the League emphasized the need for Arab States to participate in the elaboration of a new convention together with regional and international institutions and persons with disabilities, as reflected in the Manama Declaration adopted by the Arab States in Bahrain in March 2003.

Pacific Islands Forum secretariat

47. The Pacific Islands Forum secretariat was convinced of the need to formulate a convention in order to address the lack of a legally binding instrument covering the specific needs of persons with disabilities. The Forum called for a deep change in societal attitudes and perceptions, and believed that a convention should be both general and focused, and both broad-based and comprehensive and inclusive. It should suggest inclusive measures, specifically with respect to education, employment, transportation and access to information and communication technologies. The involvement of persons with disabilities and their organizations in the monitoring and evaluation mechanisms, especially at the local and national levels, would be key to the successful implementation of a convention. Partnership between Governments and non-governmental organizations would benefit the process, and the Forum recognized the need for consultation at the grass-roots level.

48. The proposal for a convention was relevant to Pacific island countries in view of the Asia-Pacific Decade on Disability, the ESCAP special session on disability, and discussion of the issue at the 2002 Pacific Islands Forum leaders meeting. There was growing awareness, advocacy and activity by regional organizations, and subregional preparatory activities should be promoted, especially for small island countries.

D. Contributions by the United Nations system

Summary of contributions

49. All contributions received from United Nations treaty bodies, organizations and specialized agencies supported the drafting of a convention and the related preparatory work at the national, regional and international levels. The complete texts of all contributions are available at http://www.un.org/esa/socdev/enable/rights/adhoccom.htm.

50. Responses pointed to the need to consider the elaboration of a convention within the context of follow-up to United Nations summits and conferences. The convention should adopt a rights-based approach to reflect the paradigm shift in development thinking from a charity model to a human rights model. As a core objective, the convention should clarify the precise obligations of State parties in realizing the fundamental rights of persons with disabilities, with specific measures to promote equal treatment and strengthen social inclusiveness. A convention should make visible and accessible the rights of persons with disabilities, and should provide access to justice and legal aid. Definitions contained in a convention should be based upon those recognized by the United Nations, in particular the International Classification of Functioning, Disability and Health.

51. The most important principles on which to build a convention included non-discrimination and the right to equal opportunities, without distinction of disability, gender, socio-economic status or any other factor. Special attention should be paid to overcoming multiple forms of discrimination. A basic element should be empowering persons with disabilities to overcome vulnerability, and a convention should recognize the specific link between poverty and disability. A convention should articulate the recognition that meeting the basic needs of persons with disabilities was essential to implementing their economic and social rights.

52. A new convention should be regarded as an addition to, rather than a replacement of, the protection afforded by existing instruments in the disability field. A multi-track approach would strengthen the implementation of existing international instruments, especially the core United Nations human rights treaties. Consideration should also be given to other legal instruments, jurisprudence and lessons learned by institutions and organizations involved in the disability field. The provisions of a convention should be regarded as minimum requirements, which States parties might exceed in national laws.

53. The adoption of a new convention would enhance significantly the implementation of the World Programme of Action and the Standard Rules by complementing areas not sufficiently covered by the two existing instruments. Information provided to any treaty-monitoring body established under a convention could be routinely shared and provided, as appropriate, to other bodies.

54. Collaboration with existing mechanisms for monitoring and evaluation was emphasized. A monitoring and evaluation system should involve social partners, organizations of persons with disabilities and the United Nations system according to respective areas of competence. An open and transparent negotiation process was essential to the success of the elaboration of a convention, and all interested parties should be involved, particularly persons with disabilities.

Contributions from specific offices, programmes and specialized agencies

55. The Economic Commission for Latin America and the Caribbean stressed the fact that many persons with disabilities also suffered disadvantages as women or as members of other social groups, including children, youth, indigenous peoples, minorities, migrants, civilians in armed conflicts or humanitarian emergencies, refugees or displaced persons. The extent to which non-discrimination and inclusion policies for those groups considered the special case of persons with disabilities should be a key issue for a convention. ECLAC also suggested the need to focus on the link between disability and issues of conflict, in particular conflict-related causes of disability, such as landmines and small weapons. Another priority was the reintegration of victims in their societies.

56. The Economic and Social Commission for Asia and the Pacific suggested that a convention be built upon rights-based development principles, promoting the social and legal visibility of people with disabilities, protecting their rights and strengthening the value of complementary existing instruments. ESCAP pointed to the principle of non-discrimination and equal opportunity, stating that they must be applied to persons with disabilities without distinction of kind or degree of disability, gender, socio-economic or national status. Emphasis should be placed on further study of the link between poverty and disability. Consideration should be given not only to medical but also to environmental and social factors, which might greatly influence the experience of disability. The definition of disability must recognize varying forms (physical, sensory, intellectual, psychiatric and multiple disabilities) and whether it was permanent, temporary or perceived. ESCAP suggested that Governments periodically submit self-evaluation reports, with a specific mandate for participation by civil society in reporting. A convention should establish an expert committee composed of persons with disabilities to monitor and evaluate its implementation.

57. The Office of the United Nations High Commissioner for Human Rights emphasized the importance of building on the existing norms and standards contained in the Universal Declaration of Human Rights, the six core treaties and other instruments in the process of elaborating a new convention. Jurisprudence and the experience of human rights treaty bodies, non-governmental organizations and specialized institutions should also be given attention. A new convention should be regarded as an addition to the existing system rather than an instrument replacing the protection afforded by existing human rights treaties in the disability field.

58. The Office of the High Commissioner encouraged the Committee to consider the findings of its study entitled "Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability",[3] as well as proposals suggested by the Secretary-General on the streamlining of the reporting procedures under different treaties in his report entitled "Strengthening the United Nations: an agenda for further change" (A/57/387). The Office of the High Commissioner will prepare a report on the issue to be presented in September 2003 and will make it available to the Committee.

59. Pending the next sessions in May and June of 2003 of the Committee against Torture, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, preliminary responses to the request for views on a convention were provided. The responses referred to the relevance of the study published by the the Office of the High Commissioner in 2002 (see para. 58 above).

They also suggested that proposals be considered on the streamlining of reporting procedures under different treaties.

60. The United Nations High Commissioner for Refugees underlined the special needs of refugees with disabilities. The United Nations Human Settlements Programme pointed to increased accessibility of human settlements, improved environmental conditions and provision of adequate housing, addressing the specific needs of persons with disabilities as key elements for the elaboration of a convention.

61. The United Nations Children's Fund suggested building upon past experiences with the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women in elaborating a convention on disability. Once fundamental principles were elaborated, the civil, political, economic, social and cultural rights of persons with disabilities should be broadly considered before following the procedural provisions for the convention. UNICEF also pointed out the importance of giving early consideration to the issue of declarations and reservations and articles that might be considered fundamental or incompatible with ratification. UNICEF suggested the reporting system of the Convention on the Rights of the Child as a useful model, including the value of individual petition mechanisms. UNICEF procedures of regular general comments, which elaborated articles of instruments of human rights law, as well as the practice of days of discussion, were also useful models.

62. Another example was provided by the mechanism for the contribution by non-governmental organizations to the work of the Committee on the Rights of the Child, including the provision and consideration of alternative reports alongside reports of States parties. In many cases, the involvement of civil society in treaty monitoring processes led to the creation of a constituency for follow-up of recommendations, adding greatly to the impact of work done by treaty-monitoring bodies.

63. The International Labour Organization expressed concern that the provisions of a new convention should not hinder the realization of the right to decent work of persons with disabilities contained in existing law at national or international levels, in particular ILO Convention No. 159 on vocational rehabilitation and employment of persons with disabilities. Specific elements in a convention should address education and vocational training, employment and working conditions in relation to the special needs of persons with disabilities. A convention should provide vocational rehabilitation services to enable persons with disabilities to enter employment or gainful activities, with vocational training and employment services to be adapted as required; equal treatment and equal opportunity in matters of employment (non-discrimination, equal pay for work); incentives and advisory services for the recruitment of persons with disabilities; development of alternative forms of employment for people who could not find work through the labour market, while ensuring that the work they do was useful and remunerative; and income replacement and social protection benefits for persons with disabilities, while ensuring that those were not a disincentive with regard to vocational rehabilitation, training or employment.

64. The Food and Agriculture Organization of the United Nations pointed to the necessity of including the right to food as a fundamental human right in the framework of a convention. Because many persons with disabilities were farmers or

people living in rural areas, their ability to feed themselves and their families was of key importance in rural settlements. FAO also stressed that malnourishment and undernourishment were important factors in the analysis of causes of disability, and of linkages between poverty and disability.

65. The World Health Organization focused on physical, psychiatric, intellectual and sensory impairment when defining disability. A convention should encompass visible and invisible disability as well as permanent and temporary impairments, and should include consideration of gender and all age groups. The Pan American Health Organization underlined the importance of the right to medical care in the least restrictive environment, together with the rights to medical and experimental treatments according to existing international human rights instruments.

66. PAHO further suggested that a convention should address issues of specific rights, fundamental freedoms and living conditions in psychiatric and disability institutions; admissions procedures; mental and physical disability review processes; treatment, standards of care and rehabilitation programmes; consent to treatment; procedural safeguards; suspension of guarantees; monitoring mechanisms and remedies; guidelines to implement domestic mechanisms, measures and remedies, international mechanisms for protection; and transitory provisions. The obligations of States parties with respect to the specific needs and characteristics of persons with disabilities should be clearly included in a convention. Special standards of protection in the monitoring mechanisms and adequate forms of inclusion and integration should be suggested, along with issues of participation, accessibility and social inclusion.

67. The International Civil Aviation Organization reported relevant articles and procedures on persons with disabilities contained in the annex on facilitation to the Chicago Convention on International Civil Aviation. Efforts have been put in place worldwide to facilitate travelling by air for persons with disabilities.[4]

E. Suggestions for the structure and contents of a convention based on existing models

68. The experience of the United Nations system with existing conventions suggests three models that the Committee may wish to consider: a holistic rights model (Convention on the Rights of the Child); a non-discrimination model (Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Elimination of All Forms of Racial Discrimination); and a hybrid model, combining social development and human rights elements.

Holistic model

69. The Convention on the Rights of the Child is a holistic convention, including all categories of human rights — civil, political, economic, social, and cultural — that are applicable to children. Although those rights are based on existing human rights applicable to all human beings, those stipulated in the Convention are more specifically tailored to the needs of children, and it includes the rights that are only applicable to children, such as those related to the family environment.

Non-discrimination model

70. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination do not provide specific rights accorded only to women or racial minorities. Those conventions reaffirm the universal human rights of women and racial minorities, and focus on how discrimination impedes their equal enjoyment of universal rights and how to ensure that women and racial minorities can enjoy the human rights guaranteed in other instruments. The conventions are instrumental in defining the concept of discrimination by identifying specific areas where discrimination is likely to occur and specifying appropriate measures to eliminate it.

Hybrid model

71. No binding instrument currently exists that specifically integrates social development and human rights norms. To do that would require the creation of a new model that combines the two approaches. The existing norms on social development include the World Programme of Action, the Standard Rules, the outcomes of United Nations summits and development conferences held in the 1990s, in particular the World Summit for Social Development, and their follow-up processes, and the United Nations Declaration on Social Progress and Development. Those normative standards would be reinforced by human rights norms, especially those relating to non-discrimination in all its facets. That would ensure that persons with disabilities had equal opportunities to benefit from the progress achieved in the social and economic development of their countries.

72. The hybrid model would include elements of both the holistic and non-discrimination models. The principles of non-discrimination and the application of all existing human rights to persons with disabilities would form the basis of a convention, which would also include recommendations to develop and guarantee special rights in areas specifically relevant to the situations and needs of persons with disabilities, such as employment, education, treatment and rehabilitation.

73. Further examination of the three models will be required to devise more options regarding the substantive and procedural aspects of a new convention and its monitoring procedure.

Notes

[1] The normative language excels in its capacity to empower individuals and groups and is also empowering in relation to economic and social rights as well as civil and political rights.

[2] Mexico initially raised the issue of a convention at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 31 August-7 September 2001), which resulted in paragraph 180 of the Programme of Action adopted by the Conference, which invited the General Assembly to consider elaborating an integral and comprehensive international convention to protect and promote the dignity of disabled people, including, especially, provisions that address the discriminatory practices and treatment affecting them.

[3] See http://www.unhchr.ch/html/menu2/hrdisability.htm.

[4] See http://www.icao.int/cgi/goto_atb.pl?icao/en/atb/fal/disabilities.htm;fal.